

**REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED**

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

INTEL CORPORATION and APPLE INC.,

Plaintiffs,

v.

FORTRESS INVESTMENT GROUP LLC,  
FORTRESS CREDIT CO. LLC, UNILOC  
2017 LLC, UNILOC USA, INC., UNILOC  
LUXEMBOURG S.A.R.L., VLSI  
TECHNOLOGY LLC, INVT SPE LLC,  
INVENTERGY GLOBAL, INC., and IXI IP,  
LLC

Defendants.

Case No. 3:19-cv-07651-EMC

**INTEL CORPORATION AND APPLE  
INC.'S OPPOSITION TO DEFENDANTS'  
INVT SPE LLC AND INVENTERGY  
GLOBAL, INC.'S SUPPLEMENTAL  
BRIEF IN SUPPORT OF DEFENDANTS'  
JOINT MOTION TO DISMISS AND TO  
STRIKE PLAINTIFFS' SECOND  
AMENDED COMPLAINT**

**REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED****I. Introduction**

Plaintiffs' Second Amended Complaint ("SAC") alleges in great detail Defendant INVT SPE LLC's ("INVT") and Defendant Inventergy Global, Inc.'s ("Inventergy") roles in the Defendants' anticompetitive patent aggregation scheme. The SAC alleges that the challenged acquisitions have combined substitute patents in nine different patent markets. The SAC further alleges that two of those markets – the Network Based Voice Messaging Patents Market and the Third-Party Device Authorization Through Limitation of Information Exchanged Patents Market – contain former Inventergy patents now owned by INVT. Neither of these markets is comprised of standards-essential patents ("SEPs"). Inventergy and INVT nonetheless seek to extend the Court's prior rulings on Plaintiffs' SEP-based claims to *all* of Plaintiffs' claims against Inventergy and INVT. There is simply no basis for doing so.

Because the SAC includes detailed allegations regarding INVT and Inventergy's involvement in anticompetitive patent aggregation for markets encompassing non-SEPs, the Court should deny INVT and Inventergy's motion.

**II. Background**

As explained in the SAC, Inventergy is a patent acquisition entity. It acquired over 180 patents from Huawei Technologies and nearly 500 patents from Panasonic Corporation in 2013 and 90 patents from Nokia Corporation in 2014. SAC ¶¶ 80-82.

The SAC also alleges extensive detail about Inventergy's relationship with Fortress. In 2014, Fortress affiliates DBD Credit Funding LLC and CF DB EZ LLC entered into a Revenue Sharing and Note Purchase Agreement with Inventergy whereby Fortress provided \$11 million in financing to Inventergy. *Id.* ¶ 83. Under that agreement, Inventergy agreed to apply revenues from patent monetization to repay the investment and to provide Fortress an additional portion of Inventergy's licensing revenues. *Id.* ¶ 84. On September 29, 2016, Inventergy announced that Fortress and Inventergy had signed a letter of intent "under which Fortress will provide financial and other resources to monetize the roughly 760 telecommunication patent assets Inventergy previously acquired from Panasonic, Nokia and Huawei. In short, Fortress has switched from being simply a finance partner of Inventergy to a comprehensive business partner." *Id.* ¶ 87. Through a 2016

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1 Restructuring Agreement, Fortress took total control of Inventergy's patent monetization. *Id.* at ¶  
 2 88.

3 Inventergy and a Fortress affiliate, CF INVT Holdings LLC, formed INVT on April 27,  
 4 2017. SAC ¶ 90. At least portions of Inventergy's patent portfolio were assigned to INVT that same  
 5 day. *Id.* In particular, Inventergy assigned patents in the Third-Party Device Authorization Through  
 6 Limitation of Information Exchanged Patents Market (the '620 and '242 patents) and the Network  
 7 Based Voice Messaging Patents Market (the '579 patent) to INVT. *Id.* ¶¶ 160-161, 306-309.

8 [REDACTED] – before INVT was formed – [REDACTED]  
 9 [REDACTED] SAC ¶ 128. INVT sued Apple and HTC in  
 10 May 2017 in district court, asserting 8 patents it claims are essential to cellular standards. SAC ¶  
 11 120. [REDACTED] – after INVT was formed and the patents were assigned to it – [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]

14 [REDACTED] After sending the [REDACTED], INVT sued Apple, HTC, and ZTE, asserting  
 15 before the International Trade Commission ("ITC") five of the patents from the prior district court  
 16 action. None of the patents identified in the SAC – i.e., [REDACTED]  
 17 [REDACTED]

18 INVT/Inventergy joined Defendants' motion to dismiss but separately move to dismiss based  
 19 on the [REDACTED]. They claim those letters preclude a claim that the challenged patent  
 20 aggregations harmed competition and enabled Inventergy/INVT to pursue supracompetitive royalties  
 21 [REDACTED]

22 [REDACTED] See INVT Motion at 2-4.

**III. Standard**

24 Plaintiffs have set forth the standard for a motion to dismiss in their contemporaneously filed  
 25 opposition to Defendants' motion to dismiss.

**IV. Argument**

27 Plaintiffs have abided by the Court's ruling and dropped their SEP-related claims. Plaintiffs  
 28 have also addressed the deficiencies the Court identified in the Amended Complaint. See Pls.' Mem.

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1 in Opp'n to Defs.' Joint Mot. to Dismiss and to Strike Pls.' 2d Am. Compl. Inventergy and INVT  
 2 nonetheless ask the Court to review the [REDACTED] and dismiss the entire SAC for failure  
 3 to state a claim as to Inventergy and INVT.

4 Inventergy and INVT's arguments are meritless for three reasons.

5 *First*, Inventergy and INVT's arguments are entirely premised on the [REDACTED]  
 6 but neither supports their arguments. The letters do not contravene Plaintiffs' allegations that  
 7 Inventergy and INVT have unlawfully aggregated patents. Inventergy and INVT claim that the  
 8 letters show that their royalty demands after [REDACTED] could not have been inflated as a result of  
 9 challenged patent acquisitions because the rates offered in those letters for patents related to the 3G  
 10 and LTE telecommunications standards were based on a pro rata SEP royalty calculation [REDACTED]  
 11 [REDACTED] INVT Motion at 2. That is irrelevant. Both letters relate only  
 12 to claimed SEPs. But the three former Inventergy and now INVT patents identified in the SAC – the  
 13 '579, '242 and '620 patents – *are not* claimed SEPs. Accordingly, none of them is encompassed [REDACTED]  
 14 [REDACTED] and the offers in those letters have no bearing on pre- and post-acquisition  
 15 royalties demanded for those three *non-SEPs*. Indeed, *none* of the SAC's patent markets is alleged  
 16 to contain *any* SEPs.

17 Inventergy and INVT misapprehend the significance of the [REDACTED] Because  
 18 neither letter encompasses non-SEPs, neither is relevant to assessing whether Defendants have been  
 19 able to demand inflated royalties for the '579, '242, or '620 patents as result of competition  
 20 eliminated through the challenged acquisitions.<sup>1</sup> Instead, the letters, along with INVT's 2017 and  
 21 2018 lawsuits, show that Inventergy/INVT are willing to assert patents, and Plaintiffs are therefore  
 22 suffering continuing antitrust injury as a result of the illegal patent acquisition scheme.

23  
 24  
 25 <sup>1</sup> But even as to the substance of the letters, INVT and Inventergy are incorrect. The 2014 letter  
 26 describes that [REDACTED] Dkt. 245-5 at 1. For its [REDACTED]  
 27 But in 2018, INVT [REDACTED] *Id.* at 2.  
 28 [REDACTED] Dkt. 245-6 at 6, 9.

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1        *Second*, Inventergy and INVT are trying to improperly expand the Court's ruling regarding  
 2 Plaintiffs' SEP-based claims in the First Amended Complaint to immunize different conduct based  
 3 on a different theory. Inventergy and INVT never explain what relevance the Court's rulings  
 4 regarding SEP-based claims have to claims alleged in SAC. And there is none: **none** of the claims  
 5 in the SAC have anything to do with claimed SEPs. *Finally*, as explained in more detail in  
 6 Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendants' Joint Motion to  
 7 Dismiss and to Strike Plaintiffs' Second Amended Complaint, Plaintiffs' allegations regarding  
 8 Inventergy's and INVT's participation in aggregating the '579, '242, and '620 patents in the relevant  
 9 markets are sufficient. For example, Plaintiffs allege in detail how Inventergy's/INVT aggregated  
 10 the '620 and '242 patents in the Third-Party Device Authorization Through Limitation of  
 11 Information Exchanged Patents Market and the resulting harms to competition. *See, e.g.*, SAC ¶¶  
 12 80-91, 160-161, 305-309, 341; *see also id.* ¶¶ 148, 159-163 (aggregation of '579 patent in the  
 13 Network-based Voice Messaging Patents Market). Inventergy and INVT offer no argument  
 14 regarding the '579, '242, and '620 patents, other than citing two paragraphs in the SAC (¶¶ 128,  
 15 130) that discuss the [REDACTED].

16        For all these reasons, there is no basis for the Court to dismiss *any* claims against Inventergy  
 17 and INVT.

18        **V. Conclusion**

19        For the reasons set forth above, the Court should deny INVT and Inventergy's supplemental  
 20 motion.

21 DATED: June 14, 2021

Respectfully submitted,

22 By: /s/ Mark D. Selwyn

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**CERTIFICATE OF SERVICE**

On this 14th day of June 2021, I hereby certify that I caused the foregoing document entitled Intel Corporation and Apple Inc.'s Administrative Motion to File Second Amended Complaint Under Seal to be filed via the court's CM/ECF system, which shall send notice to the counsel of record for the parties.

DATED: June 14, 2021

Respectfully submitted,

By: /s/ Mark D. Selwyn

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